

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. 00-114

ORDER SETTING MANDATORY MINIMUM PENALTY
TOSCO CORPORATION
AVON REFINERY
MARTINEZ, CONTRA COSTA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter called the Board), finds that:

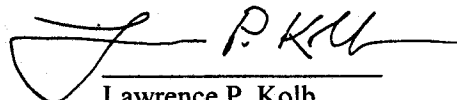
1. Tosco Corporation (Tosco) was authorized to discharge waste from the Avon Refinery in compliance with the wastewater discharge requirements contained in Order No. 93-068, which was amended by Order No. 95-138 (NPDES Permit No. CA 0004961). Order No. 93-068, as amended, contained, among others, an effluent limitation of 0.14 picogram/liter (pg/l) for dioxin. The limit for dioxin is expressed as TCDD Equivalent (TEQ).
2. On November 15, 1995, the Board adopted Cease and Desist Order (CDO) No. 95-151, ordering Tosco to cease and desist from discharging in violation of the TEQ limit. The CDO established an interim dioxin effluent limitation of 0.14 pg/l of 2,3,7,8-TCDD only, and required Tosco to comply by July 1, 1999 with the TEQ limit as stated in Order No. 93-068, as amended. Tosco has not reported any compliance problem with the interim dioxin limit contained in CDO No. 95-151.
3. On June 16, 1999, the Board amended CDO No. 95-151 with Order No. 99-046 to extend the final compliance date for TEQ effluent limitation to July 1, 2000, without changing the interim 2,3,7,8-TCDD dioxin limit. On February 16, 2000, the Board adopted Order No. 00-011 that supersedes Order No. 93-068, as amended. CDO No. 99-046 was in effect until June 21, 2000, when the Board adopted Order No. 00-056 amending Order No. 00-011 and rescinding CDO 95-151, as amended. This final amendment establishes the current dioxin limit to be 0.65 pg/l, TEQ.
4. During the period between January 1, 2000 and June 30, 2000, Tosco violated its NPDES discharge limits (Order No. 93-068, as amended, and its successor Order No. 00-011) on five occasions. These include two serious violations of the dioxin TEQ limit and three violations of the total coliform limit of 16,000 MPN/100 ml. Of these five effluent limitations, the two serious violations of dioxin TEQ limit of 0.14 pg/l and two of the violations of the total coliform effluent limit are subject to Mandatory Minimum Penalty assessment pursuant to California Water Code sections 13385(h) and (i).
5. The Executive Officer issued Complaint No. 00-070 to Tosco on September 13, 2000. The Complaint proposed a Mandatory Minimum Penalty of \$12,000. Since the Complaint was issued, Tosco has not waived the public hearing or paid the penalty.
6. Tosco contested the Complaint's allegation that, although the Avon Refinery's effluent contains dioxin concentration in excess of the TEQ limit in the underlying permit (Order No.

95-068, as amended, and its successor Order No. 00-011) during the abovementioned six-month period, it complied with the interim 2,3,7,8-TCDD dioxin limit contained in CDO No. 95-151, as amended, and shouldn't be assessed Mandatory Minimum Penalties based upon violations of the underlying NPDES permit.

7. Section 13385(h)(1) of the Water Code states, "Notwithstanding any other provision of this division, a mandatory minimum penalty of three thousand dollar (\$3,000) shall be assessed for the first serious violation in any six-month period....". Section 13385(i)(1) of the Water Code contains a similar statement for each violation that is not classified as serious violation.
8. The Board finds that, despite Tosco's compliance with the CDO's interim 2,3,7,8-TCDD dioxin limit, Tosco's failure to comply with the effluent limitation for dioxin contained in the underlying permit does not exempt it from Mandatory Minimum Penalty assessment.
9. On October 18, 2000, the Board conducted a public hearing at which Tosco appeared, and evidence was received concerning Tosco.
10. Tosco testified and provided further information before the Board about its disagreement with the violations alleged in Complaint No. 00-070. After hearing and considering Tosco's and staff's positions, the Regional Board agreed with staff's position as described in Complaint No. 00-070, and the Complaint's accompanying staff report, and as explained to them in the public hearing. The Board agreed that Mandatory Minimum Penalties should be assessed for two (2) serious and two (2) chronic violations.
11. This Order confirms Complaint No. 00-070 and imposes a Mandatory Minimum Penalty of \$12,000, which is required under section 13385(h) and (i) of the Water Code.
12. This action is an order to enforce the laws and regulations administered by the Board. This action is categorically exempt from the provisions of CEQA pursuant to Section 15321(a)(2), Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED, PURSUANT TO CALIFORNIA WATER CODE SECTION 13385, that Tosco Corporation is civilly liable for the violations of its NPDES discharge limits and as cited in Complaint No. 00-070, and shall pay the Mandatory Minimum Penalty in the amount of \$12,000. The liability shall be paid to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this Order.

I, Lawrence P. Kolb, Acting Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on October 18, 2000.


Lawrence P. Kolb
Acting Executive Officer